

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK



ROBOTIC PARKING SYSTEMS, INC.,

Plaintiff,

v.

21-CV-164 (JLS)

YALE INDUSTRIAL PRODUCTS, INC.
D/B/A DUFF-NORTON, and
COLUMBUS MCKINNON
CORPORATION,

Defendants.

DECISION AND ORDER

On January 28, 2021, Plaintiff Robotic Parking Systems, Inc. commenced this action asserting claims for breach of contract, remedies under N.Y. U.C.C. §§ 2-714 and 715, and for deceptive trade practice under N.Y. Bus. L. § 349. Dkt. 1. Plaintiff filed an amended complaint on April 19, 2021. Dkt. 10. On May 17, 2021, Defendants filed a motion to dismiss Plaintiff's amended complaint pursuant to Fed. R. Civ. P. 12(b)(6) for failure to state a claim upon which relief can be granted. Dkt. 14. On May 18, 2021, this Court referred this case to United States Magistrate Judge Jeremiah J. McCarthy for all proceedings under 28 U.S.C. § 636(b)(1)(A) and (B). Dkt. 15.

On September 3, 2021, Judge McCarthy issued a Report & Recommendation ("R&R") recommending that the motion to dismiss be granted in part and denied in part. Dkt. 20. Specifically, Judge McCarthy recommended the motion to dismiss be

granted as to Count Three of the Amended Complaint, but be otherwise denied. *See id.* at 5. The parties did not object to the R&R, and the time to do so has expired. *See* 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(2).

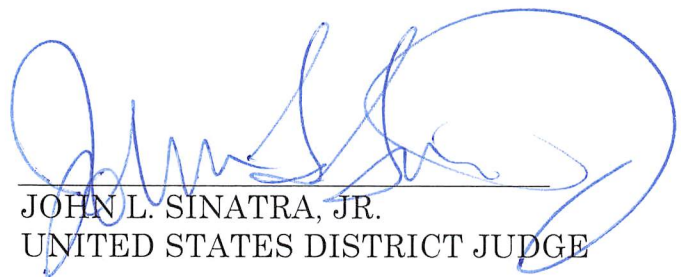
A district court may accept, reject, or modify the findings or recommendations of a magistrate judge. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3). A district court must conduct a *de novo* review of those portions of a magistrate judge's recommendation to which a party objects. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3). But neither 28 U.S.C. § 636 nor Federal Rule of Civil Procedure 72 requires a district court to review the recommendation of a magistrate judge to which no objections are raised. *See Thomas v. Arn*, 474 U.S. 140, 149-50 (1985).

Based on this Court's review and the absence of any objections, the Court accepts and adopts Judge McCarthy's recommendation to deny the motion to dismiss except as to Count Three.

For the reasons stated above and in the R&R, Defendants' motion to dismiss (Dkt. 14) is GRANTED as to Count Three; the motion is otherwise DENIED. The case is referred back to Judge McCarthy for further proceedings consistent with the referral order of May 18, 2021, Dkt. 15.

SO ORDERED.

Dated: September 22, 2021
Buffalo, New York



JOHN L. SINATRA, JR.
UNITED STATES DISTRICT JUDGE